IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO. 1918 OF 1993

Mrs. Nanda Sunkersett ... Petitioner

V/s

D.S. Dukhande & ors. ... Respondents

Mr. A. Jaykar for the petitioner.

Mr. Prashant Karande for the respondent No.1.

Mrs. Kasale for respondent Nos. 2 & 3.

CORAM: S. RADHAKRISHNAN & P.V. KAKADE, JJ.

DATED: 2ND SEPT., 2004.

P.C.:

1. Heard learned counsel for the petitioner, learned counsel for the respondent No.1 and learned A.G.P. for respondent Nos. 2 & 3. After some arguments, the learned counsel for the respondent No.1 very fairly stated that on the relevant date when the Bombay Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 which came into force on 7th December, 1996, the respondent No.1 was not in Government service. The learned counsel for the petitioner brought to our notice the judgment of the

Supreme Court in **Maheshchandra Trikamji Gajjar v/s State of Maharashtra, reported in** (**2000) 3 SCC 295,** especially paragraphs 14 & 15, which read as under:-

> "14. It is evident that the object was to protect those who would have been rendered homeless though still in government service on account of the shortage of accommodation with the Government and it being not possible for the Government to give suitable alternative accommodation to such government allottees. It is not and cannot be the case of the respondents that even after retirement, the Government had any obligation or policy to provide accommodation to retired employees. If the contention of respondent No.3 that he became a deemed tenant on account of the 1997 amendment is accepted, it would show that the Government intended to confer a special benefit of providing residential accommodation to occupants of requisitioned accommodation as a superannuation benefit. That is clearly not the object of the amendments. If that was so, there would be a special class of employees. A class that is allotted, while in service, with accommodation which is requisitioned which class would get the special benefit even on superannuation, this class will become tenant under the original owner after retirement with the benefits of all protections under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Their heirs and successors may also subject themselves to eviction only on proof of one or the other ground of eviction provided in the Act. Thus, if one is fortunate enough to be allotted accommodation out of the requisitioned premises while in service, he gets by way of superannuation gift, the continued tenancy and others who may not be that fortunate to get allotment of such premises, will have to vacate government accommodation as per the relevant rules after retirement. We are unable to attribute such an intention to the aforesaid amendments.
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> 15. The deletion of the words "allowed by the State Government to remain" from clause (b) of

> Section 5(1-A) by Ordinance dated 26.12.1997 also does nsot alter the status of an occupant like respondent No.3. The word "allowed" in the aforesaid provision may mean some positive sanction and not mere slackness on the part of the competent authority in not taking action for getting the premises vacated. It is evident that the accommodation or possession of the premises within the meaning of clause (b) by a person who when allotted was a government employee has to be on account of some right to occupy or possess the premises. The continued occupation or possession without any such right would not confer on the occupant the status of a government allottee simply on account of such person being in occupation or possession of the requisitioned premises even after retirement. The reason for authorities not taking any action to get such premises vacated is explainable on account of the said premises being not available for allotment again to any existing government servant. On this account, the authorities may not initiate any proceedings for getting the possession but that would not confer on the occupant the status of "government allottee' within the meaning of the term as defined in the Amendment Act. Thus, assuming the amendments to be valid, we find no right in favour of respondent 3 to continue with the possession of the premises even after the invalidity of the order of requisition dated 17.4.1958 and his retirement. Respondent 3 cannot be treated as a deemed tenant."

2. In the light of the above and in view of the fact that the respondent was not in service on 7th December, 1996, no protection can be afforded to the respondent as clearly laid down by the Supreme Court in the above judgment.

3. Under the aforesaid facts, the learned counsel for the respondent No.1 pleaded that the respondent No.1 is

ready and willing to give an undertaking to this Court to vacate the premises on or before 28th February, 2005 and hand over the vacant peaceful possession to the petitioner. In that behalf the respondent No.1 has filed an undertaking dated 1.9.2004. The same is taken on record. The undertaking given therein is accepted. Accordingly, the respondent No.1 is permitted to stay in the said premises upto 28th February, 2005. Under these circumstances, nothing further survives in the petition. In view thereof, the Rule stands discharged.

Parties to act on a true copy of this order duly authenticated by the Court Associate/Personal Assistant.

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(S. Radhakrishnan, J.)

(P. V. Kakade, J.)